



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: City of Lodi Contract Electric Rate Schedule with Lodi Memorial Hospital

MEETING DATE: December 15, 1999

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute the attached contract with Lodi Memorial Hospital.

BACKGROUND INFORMATION: The City of Lodi Electric Utility Department and Lodi Memorial Hospital have been working together over the last several months to develop a mutually beneficial contract electric rate schedule.

Lodi Memorial Hospital is one of the City's larger electric customers. The hospital operates facilities at two locations with several electrical services on various electric rate schedules ranging from small commercial through large commercial/industrial time-of-use. After analysis by both city and hospital staff, a discounted, totalized, "energy only" electric rate schedule for the customer in return for a guaranteed contract term of three (3) years for the City of Lodi appears to be the best arrangement for both parties. The customer would get lower-priced electric power while the City would be assured of retaining a valued customer while maintaining a positive contribution to expenses. In addition, the removal of time-of-use pricing would provide maximum flexibility for the customer's business scheduling.

This contract represents a significant step toward the development of market-based electric rates. Not only would the electric rate schedule charges be near-development level and closer to market, but also this would be the first time the City has allowed totalizing of electric energy usage at separate customer premises. While electric industry deregulation will generally tend to force the Electric Utility department to unbundle electric rate schedules, the Department intends to make the schedules as simple to understand and administer as practicable.

FUNDING: Not applicable

A handwritten signature in black ink, appearing to read "Alan N. Vallow".

Alan N. Vallow
Electric Utility Director

PREPARED BY: Jack Stone, Manager, Business Planning and Marketing

ANV/JS/lst

C: City Attorney
Finance Director
Revenue Manager
Manager, Rates and Resources

APPROVED:

A handwritten signature in black ink, appearing to read "H. Dixon Flynn".
H. Dixon Flynn - City Manager

RATE AGREEMENT
BETWEEN
LODI MEMORIAL HOSPITAL
AND
THE CITY OF LODI

This Agreement is made by and between **LODI MEMORIAL HOSPITAL**, ("Customer") and **the CITY OF LODI** ("City"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's mandatory Rate Schedule assignment and Electric Utility Department Rules and Regulations regarding totalizing of accounts.

WITNESSETH:

WHEREAS, City operates an electric utility system supplying electric power to City customers; and

WHEREAS, Customer is non-profit health care organization operating in the City; and

WHEREAS, Customer is bringing new employment to the City; and

WHEREAS, City desires to continue supply the Customer's total load and provide Customer with a contract rate.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Lodi Memorial Hospital.

- 1.4 "Facilities" are the Customer's places of business located in Lodi, California.
- 1.5 "Accounts" are the Customer's Account Numbers assigned to Customer's Facilities or its successor Customer Account Numbers.
- 1.6 "Parties" are collectively Customer and City.
- 1.7 "kw" is a kilowatt, a demand charge billing unit.
- 1.8 "kWh" is a kilowatt-hour, an energy charge billing unit.
- 1.9 "billing cycle" is the monthly bill.
- 1.10 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.

Section 2. Rate Application

- 2.1 The billing cycle charge for the Customer shall be as follows:

January 1, 1999 through December 31, 2002:

Customer Charge:	As per otherwise applicable electric rate schedule for each account
Demand Charge:	\$ 0.00 per kw
Energy Charge:	\$ 0.07000 per kWh less the Economic Development Credit.

Section 3. Term of Agreement

- 3.1 This Agreement shall be binding for bills rendered on or after January 1, 2000, and shall remain in effect subject to Paragraphs 3.2 and 3.3 below, for bills rendered through December 31, 2002.
- 3.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.
- 3.3 This Agreement cannot be terminated without mutual consent of the Parties.
- 3.4 Parties may mutually extend this Agreement from year to year beyond the original term of this Agreement.

Section 4. Force Majeure

- 4.1 If either Party because of Force Majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.

The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

4.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

4.3 The non-performing Party uses its best efforts to remedy its inability to perform. This sub-paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

Section 5. Assignments

5.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

Section 6. Amendments

6.1 This Agreement may be amended only by written instrument executed by the Parties or their successors.

Section 7. Severability

7.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 8. Governing Law

- 8.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 9. Counterparts

- 9.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 10. Headings

- 10.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 11. Notices

- 11.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

11.2 All written notices or questions shall be directed as follows:

To City: ALAN N. VALLOW
ELECTRIC UTILITY DIRECTOR
CITY OF LODI
1331 SOUTH HAM LANE
LODI, CA 95242-3995

To Customer: ACCOUNTS PAYABLE
LODI MEMORIAL HOSPITAL
P.O. BOX 3004
LODI, CA 95241-1908

Section 12. Non-waiver

12.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 13. Warranty of Authority

13.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and

authority and approval of its governing body.

Section 14. Entire Agreement

- 14.1 This document contains the entire agreement between the Parties and as to the matters addressed by this document. It shall supercede any previous written agreements between these Parties. Any inconsistent prior or contemporaneous oral agreements or understandings are void and shall not be used to modify this written Agreement.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

CITY OF LODI, a Municipal Corporation

H. Dixon Flynn, City Manager

Date

ATTEST:

Alice M. Reimche, City Clerk

Date

APPROVED AS TO FORM:



Randall A. Hays, City Attorney

12-8-99

Date

LODI MEMORIAL HOSPITAL

Joseph Herrington
Chief Executive Officer
Lodi Memorial Hospital

Date

RESOLUTION NO. 99-202

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
CONTRACT ELECTRIC RATE SCHEDULE WITH LODI
MEMORIAL HOSPITAL

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BE IT RESOLVED, that the Lodi City Council hereby authorizes the City Manager to execute Contract Electric Rate Schedule with Lodi Memorial Hospital, to be in effect for a period of three years.

Dated: December 15, 1999

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I hereby certify that Resolution No. 99-202 was passed and adopted by the Lodi City Council in a regular meeting held December 15, 1999 by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Land, Nakanishi and Mann (Mayor)

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – Pennino


for **ALICE M. REIMCHE**
City Clerk